IN THE HIGH COURT OF UTTARANCHAL, NAINITAL.

No. 10- COURT'S ORDER WHETHER THE CASE IS

OR IS NOT APPROVED FOR REPORTING.

[Chapter VIII, Rule 32(2) (b)]

Criminal Appeal No. 43/2001

Harish Ram … Appellants.

Vs.

State .. Respondent.

Decided on 01-09-2005

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

(Irshad Hussain, J.)

(B.S Verma, J)

Dated: 10-12-2008.

In the High Court of Uttaranchal, at Nainital.

Criminal Jail Appeal No. 43/2005

Harish Ram S/o Hayat Ram
R/o Villatge Khitola, P.S. Baijnath,
District Bageshwar .. Appellant.

Vs.

State …. Respondent.

Sri R.S. Sammal, learned Amicus Curiae, for the accused.
Sri H.C. Pande, and Sri G.S. Sandhu, learned A.G.A.

Coram : Hon'ble Irshad Hussain, J.
Hon'ble B.S. Verma, J.

Dated: 01-09-2005

(Per: Hon'lbe Irshad Hussain, J.)

Accused Harish Ram preferred this appeal from his conviction and sentence to imprisonment for life and fine of RS. 5000/- under Section 302 I.P.C. per judgment dated 10-10-2002 passed by the then Sessions Judge, Bageshwar in sessions trial No. 63/2000, which was consolidated with sessions trial No. 61/2000 relating to offence under Section 4/25 of the Arms Act, for which he was, however, acquitted.

2- Briefly stated the prosecution case was that in the morning of 10-4-2000 Jagdish Ram deceased went to village Hawel Pulwan along with his brother informant Dalip Ram (P.W.2) to seek their engagement for the day's labour work or in some job. They were unable to get work and decided to return to their village Srikote, within the circle of P.S., Baijnath District, Bageshwar. When both of them reached near the house of Ramesh Ram in village Khitola, the time was about 10 A.M. At that place on the pathway Jagdish Ram deceased was about ten paces ahead of his brother Dalip Ram and when he reached near the tri-circle of the pathway and the other pathway leading to village Sirkote accused Harish Ram suddenly appeared form behind a big boulder and atonce gave a blow of knife on his chest. On receiving the knife-blow and sustaining the injury on the chest Jagdish Ram fell then and there and became unconscious. Dalip Ram who was following his brother saw the incident and picked

up his injured brother to be taken from there for providing medical aid. While Jagdish Ram was being carried towards village Sirkote he breathed his last and informant Dalip Ram then left his dead body in front of the house of the accused who had already ran away from the scene of the incident after assaulting the victim. The occurrence was also witnessed by Ramesh Ram and Gopal Ram who have their houses in that vicinity.

3- The informant after leaving the dead body at that place went to Pradhan of village Sirkote who appeared reluctant to help the informant. He then went to Guman Singh of his village and they together picked up a passenger bus to reach Baijnath in order to report the matter to the police. Informant got scribed the written report, Ext. Ka.1 from Devki Nandan Joshi (P.W.5) and delivered it at P.S., Baijnath the same day at 12.45 P.M. and on its basis check F.I.R., Ext. Ka.3 was then drawn by Head Moharir Jagat Singh (P.W.7) who also made corresponding entry in G.D. report No. 15 of the same date and time, Ext. Ka.4 by registering the case against the accused under Section 302 of the Indian Penal Code.

4- At the time of the registration of the case S.I. Anand Singh Gusain (P.W.9) was the Station Officer. He took up the investigation of the case and after completion of the initial formalities left for the village of the occurrence and held inquest on the dead body of Jagdish Ram. He prepared inquest report, Ext. Ka.5, diagram of the dead body, Ext. Ka.6 and challan report, Ext. Ka.7. He also prepared site-plan, Ext. Ka.8. The packed and sealed dead body of the deceased with the letter of request for post mortem examination was dispatched. He also attached blood stained stone and undervest of deceased vide memo, Ext. Ka.12. The accused was arrested on 25.4.2000 and on his disclosure statement the Investigating Officer recovered the knife from the ‘Gadhera’ vide memo, Ext. Ka.13 He also prepared site plan, Ext. Ka.14 of the place of the recovery of the knife and recorded the statement of the witnesses. On completion of the investigation charge sheet, Ext. Ka.15 was submitted against the accused on 5.5.2000.

5- Since the knife, said to be the weapon of assault, was recovered at the instance of the accused on 25.4.2000, a separate case

under Section 4/25 of the Arms Act was also registered against the accused and its investigation was take up by S.I. Om Prakash (P.W.10) and after completion of the investigation charge sheet, Ext. Ka.17 was also submitted against the accused on 5.5.2000.

6- The learned C.J.M., Bageshwar took cognizance of the offences against the accused and committed the cases to Sessions for trial. This was how the session trial no. 63/2000 under Section 302 I.P.C. and session trial no. 61/2000 under Section 4/25 of the Arms Act were registered and on consolidation these were tried together and judgment was rendered as aforesaid convicting and sentencing the accused under Section 302 I.P.C.

7- At the trial prosecution, to bring home guilt to the accused, relied upon the evidence of ten witnesses. P.W.1, Lachham Ram is the father of the deceased. He is the witness of the recovery of the knife at the instance of the accused on 25-4-2000 and since the accused was acquitted of the charge under Section 4/25 of the Arms Act and no appeal had been preferred by the State there appear to be no need to dilate upon his evidence. So is the case with the evidence of constable Rajiv Kumar (P.W.8) and S.I. Om Prakash (P.W.10).

8- P.W.2, Dalip Ram was the sole eye witness examined to prove the case of the prosecution against the accused and he narrated the version of the F.I.R. and corroborated the claim that in his presence accused gave knife-blow on the chest of his brother Jagdish Ram at the time and place as stated above. He was also witness of the recovery of the knife which need not be referred for the reason stated above. P.W.3, Budhi Ballabh is the public witness of the inquest. P.W.5, Devki Nandan Joshi proved that he scribed the written report, Ext. Ka.1 on 10-4-2000 on the dictation of informant Dalip Ram. P.W.6, Jagdish Chandra Uniyal, is also a witness of the inquest on the dead body. P.W.7, Head Moharir Jagat Singh was posted at P.S. Baijnath on 10-4-2000 and the check F.I.R. and the G.D. reports referred above were prepared by him. P.W.9, S.I. Anand Singh Gusain investigated the case and his evidence was referred above. P.W.4, Dr. N.D. Punetha, held autopsy on the dead body of Jagdish Ram at 11 A.M. on 11-4.2000 and prepared the autopsy report, Ext. Ka.2. Ante-mortem injury detected was as under:-

Stab wound 2 ½ cm x 1cm x cavity deep present on the left side of chest, 6 cms below the nipple. Margins were clean cut and well defined.

On internal examination intercostal spaces underneath injury were found cut. There was large amount of clotted blood inside the thoracic cavity. Left side of lower lobe of the lung was cut. Left side of ventricle was also cut upto the apex of the heart. There was semi-digested food material about ½ cup in the stomach. In the opinion of the medical officer the death was caused due to shock and haemorrhage as a result of ante-mortem injury about a day ago.

9- No evidence was adduced in defence. In statement under Section 313 of the Code of Criminal Procedure accused denied the accusations of the prosecution and contended that Jagdish Ram was entertaining enmity against him on account of which he was falsely implicated in the case.

10- Placing reliance on the evidence of the prosecution, particularly, the solitary evidence of eye-witness Dalip Ram (P.W.2), the trial court accepted the case of the prosecution that none other than the accused Harish Ram wielded knife against Jagdish Ram deceased who was given fatal blow of the said weapon on the chest at the time and place as alleged by the prosecution and he was accordingly held guilty and convicted as aforesaid.

11- In support of the appeal learned Amicus Curiae appearing on behalf of the accused argued that the solitary statement of related eye witness Dalip Ram was not wholly reliable and the trial court fell in error in placing reliance on his evidence even though it was highly unusual for the witness to have kept the dead body of his brother Jagdish Ram in front of the house of the accused and then to leave the place for reporting the matter to the police. It was also submitted that two independent witnesses were named in the F.I.R. but none of them was examined by the prosecution and this aspect of the matter also tell upon the credibility of the prosecution version and the uncorroborated interested evidence of Dalip Ram should not have been acted upon towards proof of the allegations against the accused. On the contrary, learned A.G.A. argued that quality of the evidence and not the quantity matters and the conviction on the sole credible

evidence of Dalip Ram was legally justified when the occurrence was seen by this witness in full day light and there was no element whatsoever to dispute the identity of the assailant of the victim of the case. It was then submitted that the appeal being meritless need dismissal.

12- It is not in dispute that the death of Jagdish Ram was homicidal and whosoever gave him cavity deep sharp edged weapon's blow on the chest, the most vital part of the body, had intended to commit his murder. The medical evidence in that regard being definite, corroborate the prosecution version that the fatal blow was given with the intention to commit the murder of the victim of the case. The time and place of the occurrence stand corroborated by the evidence of eye witness Dalip Ram who was accompanying his brother Jagdish Ram deceased at that time as both of them were returning to their village Sirkote via village Khitola when they failed to get engagement as labourer that day, that is, 10-4-2000 in village Howel Pulwan. The evidence of P.W.4, Dr. N.D. Punetha is definite that the death was probably caused at about 10.30 A.M. on 10-4-2000 as a result of the ante-mortem injury and this pieace of the evidence further corroborate the case of the prosecution about the time of the occurrence. In regard to the place of the occurrence also there is definite evidence of eye witness Dalip Ram who gave out that his brother was assaulted by the accused at the pathway in the vicinity of village Khitola and at which place there was a big boulder behind which the accused was hiding himself and at once appeared there on the pathway to assault Jagdish Ram by wielding knife. The place where big boulder was lying was marked by letter 'B' by the Investigating Officer in the siteplan, Ext. Ka.11 and just near to that boulder at place 'A' the victim was assaulted by the accused. It is in the evidence of Investigating Officer S.I. Anand Singh Gusain (P.W.9) that blood was found lying there at that place on stones and the samples of blood stained and plain stones were also attached by him vide memo, Ext. Ka.12 and this aspect of the matter further support the prosecution case and corroborate the evidence of eye witness that the incident took place there at the pathway in the vicinity of village Khitola when the eye witness and Jagdish Ram deceased were on way to their village Sirkote. Though

the bloodstained stone was not sent to Serologist but that will not have much adverse impact on the otherwise reliable evidence discussed above and which establish the palace of the occurrence as alleged by the prosecution. The trial court also considered the evidence of the prosecution in proper perspective to come to the conclusion that the occurrence took place at the time and place as alleged by the prosecution and the death of the deceased Jagdish Ram was homicidal.

13- In regard to the actual assault, the positive case set up by the eye witness Dalip Ram, was that he was following his brother Jagdish Ram by a distance of about ten paces on the pathway while returning to their village and in the vicinity of village Khitola accused Harish Ram atonce appeared there from behind a big boulder and gave knife-blow on the chest of his brother Jagdish Ram who sustained the injury and fell down there at the place. The version given by the witness is consistent with the prosecution case as disclosed in the written report, Ext. Ka.1 and there appear to be no deviation or any marked improvement in the evidence to rope in the accused falsely by assigning him the role of the assailant. To discredit the evidence of Dalip Ram, learned Amicus Curiae submitted that by no reasoning it appear probable that the dead body of Jagdish Ram deceased would have been place in front of the house of the accused after the deceased had breathed his last while being taken by this witness to his village in injured stated form the place of the incident and that this aspect of the matter itself was sufficient to prove that the witness was not giving truthful version of the incident and in any case he was not there at the scene of the occurrence and merely came forward to show himself as the eye witness on account of his close relationship with the deceased. It has come in the evidence of the witness that soon after giving the fatal blow on the chest of the victim accused Harish Ram fled away form there. In a situation like this if the dead body of Jagdish Ram was placed in front of the house of the accused there was nothing unusual in it. More so when the cross-examination of the witness Dalip Ram do not indicate that on way to village Sirkote from the place of the incident there were other houses where the dead body of the deceased could have been placed so that the witness may

thereafter go to the village and report the matter to the police. Witness Dalip Ram was cross-examined at length but nothing of vital importance seem to have been brought on record to indicate that with some ulterior motive or design the dead body was shown to have been placed in front of the house of the accused in the vicinity of the village after the incident. In fact the piercing and searching cross-examination of th witness could not result in bringing on record any thing substantial which may assail his basis version about the actual occurrence and manner of assault by the accused on the person of Jagdish Ram. Having appraised the entire evidence of the witness we are convinced that Dalip Ram was a wholly reliable witness and his sole testimony was sufficient to prove that accused Harish Ram wielded knife and gave its blow on the chest of Jagdish Ram deceased who succumbed to the injury soon after the assault.

14- Considering the facts and circumstances of the case the quality of the evidence of this witness was such as warranting full reliance on it to base conviction of the accused for the commission of crime of the murder of the victim. It is well settled that if the sole evidence of a witness inspires confidence, conviction can be based on it and there is no requirement that there should be corroboration to such type of evidence also form the evidence of other witness. We find it advantageous to refer to reported decision of the Apex Court in the matter of Chittar Lal versus State of Rajasthan; 2003 Supreme Court Cases (Cri) 1377, wherein the Hon'ble Judges of the Court laid stress on the principal that quality of the evidence not quantity matters in following words:-

> " Administration of justice can be affected and hampered if number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of one witness, leaving aside those cases which are not of unknown occurrence where determination of guilt depends entirely on circumstantial evidence. If plurality of witnesses would have been the legislative intent, cases where the testimony of a singly witness only could be available, in numbr of crimes the offender would have gone unpunished. It is the quality of evidence of the single witness whose testimony has to be tested on the

touchstone of credibility and reliability. If the testimony is found to be reliable, there is no legal impediment to convict the accused on such proof. It is the quality and not quantity of evidence which is necessary for proving or disproving a fact."

15- The principle of appreciation of the evidence and also in regard to the placing of reliance on the evidence of sole witness on which the stress was laid by the Apex Court apply to the evidence of sole eye witness of the instant case and there can be no gain saying that the evidence of the sole eye witness Dalip Ram as discussed above proved the case of the prosecution against the accused.

16- It was also submitted by the learned Amicus Curiae that two other witnesses, viz., Ramesh Ram and Gopal Ram were also mentioned in the F.I.R. but none of them was examined in evidence and this aspect of the matter can be taken to draw an adverse inference that if these witnesses or any of them would have been examined, they would have contradicted the ocular version of Dalip Ram to raise grave doubt and suspicion in the prosecution claim itself. We see no substance in this argument also because people in general keep themselves away from the court unless it is inevitable and this appears to be the reason that these witnesses were not willing to support the prosecution case and were not examined in the evidence. Non examination of these witnesses would, however, not affect the merit of the case and the credibility of the eye witness examined particularly when the cross-examination of this witness Dalip Ram do not indicate that these two witnesses were in fact quite nearer to the place of the incident and the entire occurrence was witnessed by them also. At any rate non-production in evidence of these witnesses or any of them would not have the effect of drawing adverse inference against the prosecution and therefore the argument so advanced by the learned Amicus Curiae can safely be said to be lacking force and conviction.

17- It is of significance that the medical evidence of the case fully corroborate the evidence of eye witness Dalip Ram and so is the case with the F.I.R. of the case which was lodged without delay at 12.45 P.M. the same day at the police station, which is situate at a distance of about 14 kilometers from the village of the occurrence. It may be

recalled that the occurrence took place at about 10 – 10.30 A.M. and considering the above distance the F.I.R. was prompt which rule out the possibility of any deliberations to falsely implicate an innocent in the case. In other words the version of the F.I.R. fully corroborate the evidence of the eye witness to lead to an inference that accused Harish Ram gave fatal knife blow on the chest of Jagdish Ram deceased and thus committed the murder of the said victim at the time and place as stated above.

18- In regard to the motive aspect of the case, it is of significance that accused gave out in his statement that Jagdish Ram was entertaining enmity against him and since enmity is a double eged weapon, the accused has had a cause to eliminate his opponent. In other words accused has had motive to commit the murder.

19- Learned Amicus Curiae failed to point out any infirmity or material defect in the investigation of the case and considering the evidence on record we find ourselves in full agreement with the opinion of the trial court that the evidence of the prosecution prove beyond doubt that accused Harish Ram committed the murder of Jagdish Ram deceased at about 10 A.M. on 10-4-2000 in the vicinity of village Khitola. The accused was thus rightly held guilty and convicted under Section 302 I.P.C. There being no force in this appeal, the same is liable to be dismissed.

20- The appeal fails and is hereby dismissed. The judgment dated 10-10-2002, convicting the accused Harish Ram under Section 302 I.P.C. and sentencing him to imprisonment for life and a fine of Rs. 5000/-, is affirmed. In default of payment of fine, the accused shall further undergo R.I. for six months. The accused-appellant Harish Ram is in jail. He shall suffer the sentence awarded against him.

21- Let the record be sent to the trial court.

(B.S. Verma, J.) **(Irshad Hussain, J.)**

ISB